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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 359

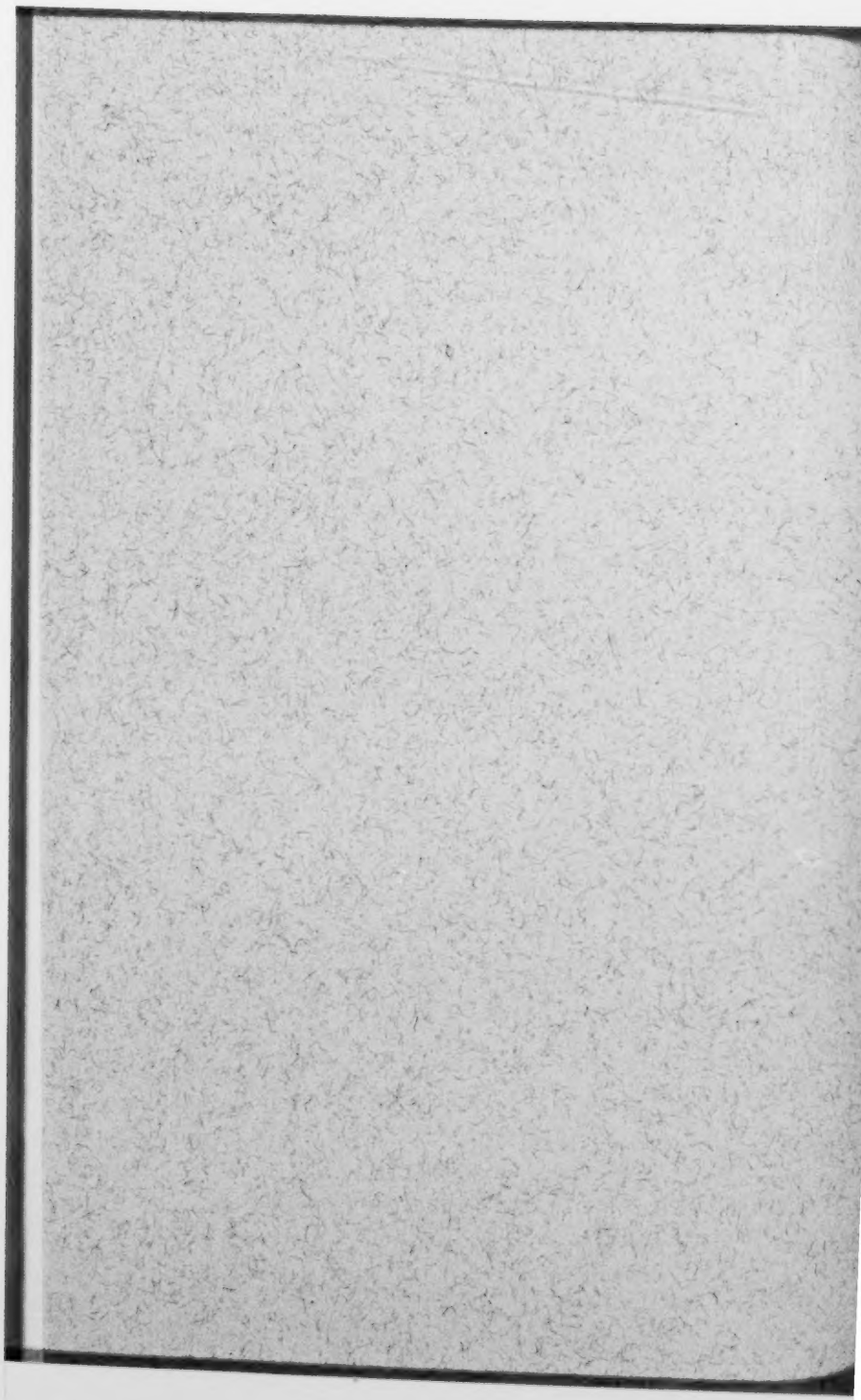
PORTER-WADLEY LUMBER COMPANY, ET AL.,
Petitioners,

vs.

JAMES T. PRUITT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEFS IN SUPPORT THEREOF.

JOHN B. FILES,
JOSEPH H. JACKSON,
Counsel for Petitioners.



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SUPREME COURT OF THE UNITED STATES

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No. 359

PORTER-WADLEY LUMBER COMPANY, ET AL.,

Petitioners,

vs.

JAMES T. PRUITT.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

The petitioners, J. K. Wadley, Mrs. Lillian J. Porter, Margaret Porter, Mrs. W. R. Grim, Emeline Grim Fuller, Loretta Grim Thomas, and J. M. Wilson, respectfully show:

1.

James T. Pruitt, respondent, instituted proceedings in the Twenty-Sixth Judicial District Court, Webster Parish, Louisiana, March 14th, 1938, claiming the ownership and possession of the E½ of the SE¼ and the SE¼ of the NE¼ of Section 7, Township 21 North, Range 9 West, Webster Parish, Louisiana; said property was formerly owned by the

Porter-Wadley Lumber Company, an Arkansas corporation, which company sold said land February 12th, 1916, reserving mineral rights as follows:

> "The vendor, the Porter-Wadley Lumber Company, retains, reserves, holds, keeps and owns for a term of 35 years, all oil, gas, sulphur and mineral rights of any and every description that may exist, or be found in and under the lands herein conveyed, with the rights of ingress and egress for purposes of searching, developing, exploiting and producing the said oil, gas, sulphur, or minerals and the right to take water and fuel from the lands for the purpose of such exploitation, with the right to build pipe lines and tanks for the purpose of saving and removing the products that may be found.
>
> "Porter-Wadley Lumber Company shall pay to the vendee hereunder, his heirs and successors or assigns one-half of all the net revenues that may be obtained from the sale of the oil, gas, sulphur and minerals herein reserved, all more fully shown by reference to said deed, which appears recorded in Vol. 26, page 377, Records of Webster Parish, Louisiana, made a part hereof by reference."

He alleges that he acquired said property by ten years prescription, and petitioners are slandering his title by claiming to own said mineral rights and other assets of said Arkansas corporation.

2.

Petitioners promptly removed said suit, as provided by the laws of the United States, to the District Court of the United States for the Western District of Louisiana, Shreveport Division, May 25th, 1938.

3.

Petitioners, in their answer, denied title of respondent in the mineral rights reserved by the Porter-Wadley Lum-

ber Company, and alleged that said company was incorporated under the laws of Arkansas, without debts and was dissolved in accordance with the laws of that State; that upon said dissolution, petitioners, as sole stockholders and beneficiary owners of the assets of said corporation, became thereby vested with the legal title to the corporate assets under the laws of Arkansas; that they have never sold or disposed of their interest in said mineral rights; that one of the stockholders and co-owners of said mineral rights was Margaret Porter, a minor, whose minority suspended the current of prescription not only as to her interest but as to the interests of the other co-owners as well; and with the consent of respondent, a well for oil and gas was drilled on said property January 2nd, 1920, under the terms of a lease executed by petitioners to the Pine Valley Oil Company.

4.

The District Court held that the dissolution of the Porter-Wadley Lumber Company, an Arkansas corporation, in accordance with the laws of Arkansas, could not affect the title or disposition of the mineral rights on property in Louisiana, but that it continued to exist as a corporation in Louisiana; its corporate existence was controlled by Act 267 of 1914 of the Acts of Louisiana, and that the dissolution of said corporation under the laws of Arkansas was not effective in the State of Louisiana.

5.

An appeal from said judgment to the United States Circuit Court of Appeals, Fifth Circuit, was prosecuted and by its decree herein on April 1st, 1940, the judgment of the District Court was affirmed; the Court of Appeals held that the dissolution of the Porter-Wadley Lumber Company, an Arkansas corporation, in accordance with

the laws of Arkansas did not effect a dissolution of said corporation in Louisiana, and that the dissolution of said Arkansas corporation was controlled by Act 267 of 1914 of the State of Louisiana, as interpreted by the Supreme Court of Louisiana, holding that the dissolution of an Arkansas corporation under the laws of Arkansas is not effective in Louisiana.

Petitioners timely applied for a rehearing and assigned errors to the judgment of the District Court and of the Court of Appeals affirming said judgment, and after consideration by the Court of Appeals, the rehearing was denied June 13th, 1940.

6.

In this cause, there is drawn in question the validity of Act 267 of 1914 of the statutes of Louisiana as interpreted by the Court of Appeals, Fifth Circuit. Petitioners aver that the act as interpreted is repugnant to the constitution and laws of the United States, and that respondent in this case cannot recover the property involved upon the pleadings and the evidence introduced on the trial of the case, unless it be held that Act 267 of 1914 of the statutes of Louisiana is applicable to and controls the dissolution of the Porter-Wadley Lumber Company, an Arkansas corporation dissolved in accordance with the laws of Arkansas.

7.

That said act so interpreted and the refusal of the court to give effect to the law of Arkansas violate and are contrary to Section 1, Article 4, of the constitution of the United States, which requires full faith and credit be given in each state to the public acts, records, and judicial proceedings of every other state, and accordingly, petitioners allege that said act as interpreted is unconstitutional, null and void.

8.

Petitioners further aver that said reservation of mineral rights was a binding valid contract between respondent and petitioners at the time of its execution, and the rights so reserved became vested in petitioners and the interpretation of Act 267 of 1914 of the Legislature of Louisiana by the Court of Appeals, Fifth Circuit, and the reasons given in said opinion change the terms and conditions of said contract and annul the rights vested in petitioners thereunder in violation of Article 1, Section 10 of the Constitution of the United States.

9.

Petitioners aver that a correct decision of the issues presented by this case will determine not only the rights of the litigants in the property in controversy, but will likewise be decisive of the rights, titles, and interests of various persons who have acquired rights in large tracts of land subject to the same mineral reservation.

10.

Petitioners aver that the opinion of the Court of Appeals held that the Porter-Wadley Lumber Company, though dissolved in accordance with the laws of Arkansas, the State of its creation, was still an existing corporation in the State of Louisiana, which opinion was contrary to and inconsistent with its decree against petitioners as individual stockholders of said corporation in a suit in which the corporation was not cited or made a party litigant.

11.

Petitioners aver that the decision of the Circuit Court of Appeals is erroneous on the grounds above indicated and more fully set out in assignment of errors in the petition

for rehearing (R. 171) and amplified in the briefs filed herewith, and this honorable Court should require said cause to be certified to it for review and determination in accordance with the provisions of the Acts of Congress.

Wherefore, and for the reasons set forth in the brief in support hereof, petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this honorable Court directed to the Court of Appeals, Fifth Circuit, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record in all proceedings in the case numbered and entitled on its docket, 9301, Porter-Wadley Lumber Company, et al., Appellants, *v.* James T. Pruitt, Appellee, and that the said opinion and decree of the Court of Appeals, Fifth Circuit, may be reversed by this honorable court, and that your petitioners may have such other and further relief in the premises as to this honorable Court may seem mete and just, and your petitioners will forever pray.

JOHN B. FILES,
JOSEPH H. JACKSON,
Counsel for Petitioners.